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Report of the Independent Expert on the situation of human rights in Haiti*

Note by the Secretariat

The Independent Expert on the situation of human rights in Haiti continues to consider the situation to be complex but not irremediable, provided that all efforts to improve it pull in the same direction.

First and foremost, the Independent Expert emphasizes the importance of his recommendations, which are aimed at increasing the population's literacy rate within a reasonably short space of time, improving inhumane detention conditions, particularly those of persons held in prolonged pretrial detention, establishing a commission on truth, justice and redress for human rights violations committed in the past and guaranteeing decent housing for displaced persons.

These recommendations are based on the Independent Expert's call for Haiti to overcome the extreme structural inequality affecting the country's society and institutions by focusing on the five priority areas indicated in his previous reports: economic, social and cultural rights; detention conditions; the rule of law and institutional integrity; the functioning of the administration of justice; and the environment, housing and Haitian migration.

In the present report, the Independent Expert highlights the progress made in two specific areas: elections, which appertains to the rule of law, and cholera, which appertains to the rights of people affected by factors not related to the Haitian State. He also emphasizes the urgent need to ensure a stable government and provide redress to the victims of cholera.

The Independent Expert visited the prisons of Croix-des-Bouquets and Cabaret. He reiterates the urgent need to put an end to prolonged pretrial detention. He also visited a camp of returnees from the Dominican Republic. Their situation is very precarious and they are at risk of becoming stateless.

The Independent Expert travelled to Grand'Anse Department, where he visited a shelter in Jérémie and witnessed the plight of those affected by the hurricane. He calls for renewed efforts to address the most urgent needs of the victims of the disaster.

* The present report was submitted late to reflect the most recent developments.

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To ensure proper coordination of these urgent actions, the Independent Expert again underscores the need to re-establish the function of Minister for Human Rights (or a similar mechanism) and to devise a human rights policy and an action plan that take into account the recommendations made by the Independent Expert, other mandate holders and the treaty bodies.

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I. Introduction

1. The present report is submitted pursuant to the statement of the President of the Human Rights Council (A/HRC/PRST/31/1) of 24 March 2016, in which the Council invited the Independent Expert on the situation of human rights in Haiti to undertake a mission to Haiti and to report on that mission to the Council at its thirty-fourth session. In the President's statement, the Council agreed to extend the mandate of the Independent Expert, Gustavo Gallón, by one year.

2. The present report relates to the period from 24 March 2016 to 25 January 2017 and contains recommendations for the Government of Haiti and the international community. It takes up the five priority areas indicated in the previous reports, examining some aspects in greater detail, including the elections and the situation of the victims of natural disasters, particularly the victims of Hurricane Matthew, which struck Haiti on 3 and 4 October 2016.

3. The Government of Haiti sent its response to the Independent Expert's report on 23 January 2017.

4. The Independent Expert undertook a mission to Haiti from 18 to 26 October 2016, followed by meetings in New York on 27 and 28 October. He stayed in Port-au-Prince and visited Jérémie in Grand'Anse Department, in the south-west, to survey the damage caused by Hurricane Matthew.

5. Previously, the Independent Expert had visited Haiti from 21 February to 1 March 2016, three weeks before presenting his oral report to the Human Rights Council on 22 March, but after the publication of his written report. This report also contains references to that visit.

6. The Independent Expert wishes to thank all those whom he met during his visit, particularly the interim President of the Republic, the head of the Office of the President, the Ministers of Finance, Foreign Affairs and Religion, the Interior and Regional and Local Governments, Justice and Public Security, and Public Health and the Population.

7. The Independent Expert thanks also the head of the Provisional Electoral Council, the Ombudsman, the Chair and a member of the Presidential Commission on Prolonged Pretrial Detention, the immigration services of Ouanaminthe, at the border between the Dominican Republic and Haiti, and the authorities of Jérémie, the Croix-des-Bouquets detention centre and the Cabaret women's prison, whom he also had the opportunity to meet.

8. The support received from the United Nations Stabilization Mission in Haiti (MINUSTAH) was instrumental in the success of this mission. The Independent Expert wishes to express his appreciation to the Special Representative of the Secretary-General and to all those working with her, in particular the Human Rights Section. He also wishes to thank the representatives of the United Nations programmes in Haiti and New York and their teams for their support and for the information that they provided.

9. The Independent Expert wishes to thank as well the representatives of the Organization of American States, through whose good offices he was able to meet with members of the diplomatic corps in Haiti. He also expresses his thanks to the ambassadors of the Group of Friends of Haiti with whom he met in New York, hosted by the Permanent Mission of Uruguay to the United Nations.

10. The Independent Expert extends his sincere thanks to the many representatives of civil society organizations, political parties and members of several human rights non-governmental organizations in Port-au-Prince and Grand'Anse Department with whom he met in Haiti and in New York.

II. Five key aspects of the human rights situation in Haiti

11. In the initial report on Haiti that he submitted to the Human Rights Council in 2014 (A/HRC/25/71), the Independent Expert recommended that the Haitian authorities and the

international community should focus their efforts on five particularly alarming aspects of the country's human rights situation: (a) illiteracy; (b) prolonged pretrial detention; (c) the lack of elections; (d) impunity for past violations; and (e) the situation of persons affected by other factors, such as those displaced by the 2010 earthquake, Haitians or persons of Haitian origin deported from the Dominican Republic and cholera victims.

12. The Independent Expert called for the adoption of urgent measures to bring an end to the perpetration of violations in these five areas. Such violations are so widespread that, for many people, they are perceived as being a normal part of everyday life. Far from being normal, however, they highlight the degree of deterioration of the human rights situation in Haiti. Therefore, the structural situation must first be remedied and these extreme circumstances addressed if a solid foundation is to be laid for developing a policy to protect and promote respect for human rights in the country.

13. The five key issues correspond to five broader areas, which serve as a gateway to devising and implementing, in the longer term, more sophisticated measures conducive to developing the policy to protect and promote respect for human rights, namely: (a) economic, social and cultural rights in their entirety; (b) detention conditions; (c) the rule of law and institutional integrity; (d) the functioning of the administration of justice; and (e) the environment, housing and Haitian migration.

14. The five key issues stem from the deep inequality that underlies human relations in Haiti and that must be addressed through specific and persistent action aimed at reducing it as much as possible, which is a prerequisite for significantly improving the human rights situation in the country.

15. The five key issues, the five areas mentioned above and the underlying inequality have been mentioned in the reports of special procedures mandate holders in Haiti since 1986, firstly by the Commission on Human Rights and then by the Human Rights Council.[1] Although they are not new issues, the Independent Expert deemed it appropriate to organize and prioritize them as indicated above. They are the common thread running through his reports and help him to monitor the situation, which he had already described as complex but not irremediable in his first report.

16. The year 2016 was marked by a situation of temporary or transitional governance, as the term of the former President of the Republic, Michel Martelly, expired on 7 February 2016 without a successor having been elected. An agreement had to be concluded between the outgoing President and the presidents of the Senate and the Chamber of Deputies, after which Parliament elected the president of the Senate, Jocelerme Privert, interim President of the Republic with a specific mandate to oversee the electoral process in addition to governing the country.

17. This interim mandate is linked to the implementation of one of the urgent recommendations made by the Independent Expert, relating to the holding of elections, which, after having been blighted by various difficulties during the year, finally took place on 20 November 2016, in the form of the first round of presidential elections.

18. Limited progress has also been made towards giving effect to another recommendation made by the Independent Expert relating to the victims of cholera, for which the Secretary-General has admitted responsibility on behalf of the United Nations. On 1 December 2016, the Secretary-General issued an apology to the Haitian people and announced a new approach to resolving the cholera problem.

19. A presidential commission was set up within the Ministry of Justice to deal with the issue of prolonged pretrial detention. The Government informed the Independent Expert that "the work of the commission has brought about a reduction in … the rate of prolonged pretrial detention".[2] On his next visit to the country, the Independent Expert will be able to verify whether there has in fact been a reduction in such detention.

[1] See Economic and Social Council resolution 1503 and document E/CN.4/1987/61.

[2] "Response of the Government of Haiti to the report of the Independent Expert on the situation of human rights in Haiti", transmitted to the Independent Expert on 23 Jan. 2017, para. 6.

20. The Independent Expert was informed by the Haitian authorities that the deportation of Haitian nationals and persons of Haitian origin from the Dominican Republic was still ongoing.[3] More effective measures must be adopted to improve their de facto and de jure situation.

21. No specific measures seem to have been adopted to boost literacy or to deal with past violations. The Independent Expert continues to highlight this problem in the present report.

22. In his previous report, the Independent Expert noted that, following the abolition in December 2014 of the human rights entity established in 2012 in the form of a Deputy Minister attached to the Office of the Prime Minister, it would be advisable to have a human rights entity with sufficient authority to coordinate the work of the government agencies active in this sphere and to broker the adoption of a cross-cutting human rights policy within the executive branch, from where it would subsequently be extended throughout the State and society. The Government took note of "those recommendations deemed relevant"[4] and informed the Independent Expert that it would transmit them to the new administration.

23. In his previous report, the Independent Expert encouraged the Government — and he does so again — to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance; and the Inter-American Convention Against All Forms of Discrimination and Intolerance. He also encourages Parliament to approve the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Government had submitted to it to obtain its authorization for the instrument's ratification.

24. In November 2016, Haiti underwent its universal periodic review before the Human Rights Council. It accepted a total of 175 recommendations, including a recommendation to adopt, in consultation with civil society, a plan of action to prioritize, ratify and implement key international human rights treaties, including the Convention against Torture, its Optional Protocol and the Optional Protocols to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness; to continue its efforts to provide full access to justice, health services and education for all; to implement a plan of action to promote human rights, in cooperation with civil society and the Office of the Ombudsman, with a special emphasis on the rights of women and vulnerable groups; to remove from its legislation and practice all civil and criminal provisions that constitute discrimination towards women and girls; and to redouble its efforts to improve the conditions of persons deprived of their liberty, in particular by reducing periods of pretrial detention, facilitating access to justice and improving the facilities of detention centres.[5]

25. Haiti replied that the other recommendations made during its universal periodic review would be examined and that it would respond to them, at the latest, during the thirty-fourth session of the Human Rights Council in March 2017. To this end, a consultation workshop with civil society, the diplomatic corps and the United Nations agencies present in Haiti was held on 20 December 2016. Following the consultation, the Government informed the Independent Expert that it was no longer deferring any recommendations and that the number of recommendations accepted by Haiti had risen to 188 and those of which it had taken note to 25. The Government also wished to point out that the recommendation to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, which the Independent Expert had encouraged it to

[3] Ibid., para. 7.
[4] Ibid., para. 3.
[5] A/HRC/34/14, para. 115.

accept, "has been taken into account and the recommendation to systematically address exploitation and violence against children, including through legislation criminalizing domestic child labour, has been noted. Also, the recommendation to take measures to guarantee displaced persons access to [basic] services so that they can leave the camps, which had been noted by Haiti, was subsequently accepted".[6]

26. The Independent Expert stresses the importance of the country's acceptance of the recommendations made to it and of the consultation procedure introduced in that connection. He also encourages both civil society and the new administration to continue to work to ensure their effective implementation.

27. The Independent Expert also calls on Parliament to approve, as soon as possible, the instruments of ratification for the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, which the Government has submitted to it, according to information transmitted to the Independent Expert after his visit in October 2016.[7]

28. Haiti did not submit its fourteenth periodic report to the Committee on the Elimination of Racial Discrimination. The country's initial report to the Committee on Economic, Social and Cultural Right is also overdue. However, the Government informed the Independent Expert that the Interministerial Committee on Human Rights was in the process of drafting the report, which would soon be submitted to the body in question. It is also important to mention the adoption of the concluding observations of the Committee on the Rights of the Child (CRC/C/HTI/CO/2-3) in January 2016 and of those of the Committee on the Elimination of Discrimination against Women (CEDAW/C/HTI/CO/8-9) in March 2016.

29. In its resolution 2313 (2016) of 13 October 2016, the Security Council announced its intention to consider the possible withdrawal of MINUSTAH and the transition to a future United Nations presence beginning no sooner than 15 April 2017 and, at the same time, recognized that respect for human rights was an essential element for the stability of Haiti, in particular, attention to individual accountability for grave violations under past governments. The role played by the MINUSTAH Human Rights Section has been crucial in assisting the authorities in this area and in helping to improve the human rights situation in the country. In the event of the withdrawal of MINUSTAH, this role must be preserved, as there is still much work to be done in the area of human rights. The Government informed the Independent Expert that it "welcomes" [8] that proposal. Given the technical nature of the Section, it is advisable to maintain the political complementarity provided by the mandate of the Independent Expert and his function of making recommendations to both the authorities and the Human Rights Council, and to submit to the latter an annual report on the situation. One possible option might be to give a political mandate to the Human Rights Section in Haiti, thus enabling it to take on the role played to date by the Independent Expert. However, it is evident that the Section must maintain its presence in Haiti after the possible withdrawal of MINUSTAH and that the mandate of the Independent Expert must also be retained if the functions that he performs are not encompassed by the mandate of the Section.

A. Literacy, social inequality and economic, social and cultural rights

30. The period of transitional governance in Haiti in 2016 was not conducive to the fight to reduce the deep social inequality underlying Haitian society, a fight that must continue if the main cause of the critical human rights situation in the country is to be overcome, starting with the precariousness of the economic, social and cultural rights of the majority of the population.

[6] "Response of the Government of Haiti to the report of the Independent Expert on the situation of human rights in Haiti", para. 9.

[7] Ibid., para. 10.

[8] Ibid., para. 12.

1. Universal literacy within a reasonably short time

31. In his initial report, the Independent Expert recommended that the State party should establish a reasonably short time frame for eradicating illiteracy, and he is bound to reiterate that recommendation today.

32. It is not necessary to spend large sums of money to succeed in this task, but rather to devise a campaign based on a firm government decision to completely and urgently eliminate the problem as a matter of urgency. This decision should be supported by the voluntary work of secondary school students and other Haitians wishing to help people acquire this basic life skill.

33. This would be a means not only of overcoming illiteracy but also of introducing a mechanism to build solidarity among the population, allowing its members to work towards a common goal that transcends the prevailing situation of social polarization.

34. During his visit in October, the Independent Expert was informed that, in 2010, the Government had drawn up an education plan that included the goal of eradicating illiteracy within five years. Despite the new Government's having taken up the plan in 2011, it was never implemented. It is still possible for the Government to take up the plan and to turn it into reality.

35. During his previous visits, the Independent Expert spoke of his concerns with the Minister of Education and officials responsible for literacy. According to the information received, the Ministry of Education wished to double its budget, which represented 5 per cent of the gross domestic product and 16 per cent of the national budget.

36. The Independent Expert hopes that the new Government will prioritize the eradication of illiteracy in Haiti and devise a literacy policy to eradicate the phenomenon within a reasonably short space of time in order to provide a solid foundation for the realization of human rights in the country. He also reiterates his invitation to the international community to join these efforts and to coordinate cooperation with the Government of Haiti in this area.

2. Other aspects of economic, social and cultural rights that require special attention

37. The living conditions of most Haitians remain precarious and have not changed much from those observed in the Independent Expert's previous reports: 60 per cent of the population earn less than US$ 1 per day, while the percentage unemployment rate, the Global Hunger Index, the malnutrition level, the number of children not attending school and the number of school-age children who do not finish their secondary education, not to mention the shortage and poor quality of housing and the inadequate access to basic health care, are very high.[9] In 2014, the human development index in Haiti was 0.483 (ranked 163rd out of 188 countries and territories),[10] its inequality-adjusted human development index 0.296,[11] its gender inequality index 0.603 (138th place) and its Gini coefficient 59.2.[12]

38. The Independent Expert reiterates the call that he made in his previous reports that the new Government should ensure that its development plan was aimed at overcoming the deep social inequality existing in Haiti and should, to that end, take steps to significantly improve income levels for workers, health and education for the poorest of the poor, reproductive health for women, and women's empowerment and representation in Parliament, among other issues, and, generally, ensure decent living conditions for all.

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[9] See A/HRC/31/77, para. 27.

[10] See www.undp.org/content/dam/undp/library/corporate/HDR/HDR%202015/HumanDevelopmentReport_EN.pdf (table 1, p. 210, and table 2, p. 214).

[11] See http://hdr.undp.org/en/countries/profiles/HTI.

[12] See http://hdr.undp.org/en/indicators/67106.

B. Prolonged pretrial detention and inhumane detention conditions

1. Urgent need to eradicate prolonged pretrial detention

39. During their meetings with the Independent Expert, the President of the Republic and the Minister of Justice acknowledged the need to put an end to prolonged pretrial detention, which has led to the situation that 71 per cent of persons deprived of their liberty have not come before a judicial authority. According to official figures, at the time that the Independent Expert conducted his sixth visit to Haiti in October 2016, 3,182 out of 11,012 prisoners (372 of whom were women, 220 were boys and 22 were girls) had been convicted, while 7,830 were in detention awaiting trial.

40. The Presidential Commission on Prolonged Pretrial Detention was set up to address this recurring human rights violation. The Commission, which is composed of nine members, was set up on 5 September 2016 by the Minister of Justice and tasked with drawing up a national list of the persons being held in prolonged pretrial detention in all civilian prisons and in all police stations serving as detention centres for the country's 18 courts of first instance and making recommendations for the scheduling of court hearings to process the cases identified, expeditiously and in accordance with the law.

41. The deadline by which the Commission is to complete its work is set at three months and may be extended. The list of persons being held will not take long to draw up, as similar lists have already been meticulously prepared by other organizations in the country. The scheduling of hearings, however, will require a little more time. The Chair and a member of the Commission voiced their concern to the Independent Expert about the short time available for the Commission to complete such a complex task, for which they deemed a period of at least one year to be necessary, and expressed the view that a permanent institution should be set up to monitor pretrial detention-related issues, including the work of judges and government commissioners.

42. Although the Commission did not have a budget for the first month and a half of its existence — in other words, half the time allotted for it to conduct its work — the Minister of Finance informed the Independent Expert in October 2016 that his office had earmarked sufficient funds to ensure its proper functioning.

43. Qualified observers from the legal community and political analysts had mixed views on the Commission's chances of success: for some of them, the fact that the decision to establish it had been taken at the presidential level was a good sign, whereas, for others, it was not the first time that a commission with similar objectives had been established and its composition was not very impressive. Moreover, the short period of time allotted to it to complete its work could become an obstacle to the fulfilment of its mandate. However matters turn out, it is desirable that the Commission should overcome its real or perceived limitations so as to enable the country's prison population numbers to return to normal levels as soon as possible.

44. The Independent Expert reiterates once again the urgent need to put an end to prolonged pretrial detention in Haiti. The measures that he has proposed have been set out in detail in his previous reports.

2. Other factors related to detention conditions

45. According to the authorities, there were 11,012 persons in detention during the Independent Expert's sixth visit in October 2016, whereas the capacity of the country's prisons does not exceed 4,000, giving rise to a prison overcrowding rate of 359 per cent.[13] There would be no overcrowding if only persons who had been convicted (of whom there

[13] According to information provided orally by the Prisons Administration. This body has set itself the target of providing each prisoner with 2.5 square metres of living space. If this were the case, the capacity of the country's prisons would be 2,944 persons. According to the United Nations, the target should be 4.5 square metres per person, which would make the capacity of the country's prisons 1,635 people.

were 3,182) and a limited number of persons awaiting trial for a reasonably short period of time were deprived of their liberty.

46. Fortunately, and exceptionally, there is no overcrowding in the new prison built in the municipality of Cabaret, near Port-au-Prince, which the Independent Expert visited in October 2016. The prison was already housing 254 women, 17 of whom were minors from the Pétion-Ville women's prison, and has a capacity of 300. Each prisoner has a decent place to sleep. This prison is therefore an example of a facility that is not overcrowded and is, in addition, clean and equipped with an education service for minors.

47. However, there is no drinking water in the facility and privacy is not guaranteed in the showers or toilets, although this could be very easily remedied through the use of plastic curtains, which can be purchased at a minimal cost. There is a higher proportion of male guards in the prison than of female guards, which poses a risk to the safety and privacy of female prisoners. There must also be spaces for prisoners to work. Recreation time is limited to three hours per week in a courtyard and there is a refectory that is not in use, apparently because the prison authorities are afraid of not having enough officers to monitor the prisoners in these locations.

48. During his fifth visit to the country, in February 2016, the Independent Expert also visited the Croix-des-Bouquets prison on the outskirts of Port-au-Prince. The detention conditions in the prison were better than in the other detention centres that he had visited on previous occasions. The overcrowding rate still exceeded the prison's capacity by 50 per cent, as some 1,105 detainees were being housed in a structure built to hold approximately 760 people. Only 330 prisoners had been convicted. The remaining 775 (or 70 per cent of the prison's population) were persons being held in pretrial detention, despite the fact that Croix-des-Bouquets prison had been built to house convicts only.

49. In the prison, the Independent Expert met a man who had been in pretrial detention since December 2012, or more than three years. Accused of having bought a weapon that was allegedly stolen, he could face a prison sentence of one and a half years if convicted. He had never come before a judge.

50. According to the prison director, family visits to Croix-des-Bouquets prison had been suspended since September 2015 owing to the public order situation and popular protests prompted by the election results. This, however, is not sufficient justification for depriving the prisoners of the right to receive visits from their relatives for more than a year.

51. As is the case in the prison in Cabaret, the recreation time in Croix-des-Bouquets prison is capped at less than one hour per day in a courtyard, as the guards do not feel that they are sufficient in number to thwart an escape attempt. This could also be the reason why the refectory is not in use, despite the fact that it has the capacity to accommodate 100 people.

52. The prisons in Cabaret and Croix-des-Bouquets have experienced fewer difficulties than the other places of deprivation of liberty in the country, most of which offer extremely poor living conditions as regards space per person, toilets, health services, food, and opportunities for prisoners to work or study. Generally speaking, the conditions in Haitian prisons amount to inhuman and degrading treatment. The Independent Expert reiterates the invitation that he extended to the Haitian authorities in his previous reports to make these places more humane by guaranteeing persons deprived of their liberty decent living conditions, in accordance with universal standards for the treatment of prisoners. The Haitian authorities should, at the very least, seek to emulate the example of the prison in Cabaret.

C. Elections and the rule of law

53. The most pressing institutional challenge that the Haitian authorities had to face in 2016 was that of the elections, but there are other serious shortcomings in the rule of law that should be noted.

1. Elections in 2015 and 2016

54. The lack of elections in Haiti between 2011 and 2014 left the State without a parliament throughout 2015, which had a negative impact on the functioning of other institutions, such as the judicial system. As has already been noted in previous reports, in keeping with the recommendations made by a commission set up by the former President, Michel Martelly, a new Prime Minister, Évans Paul, was appointed in December 2014 with a specific mandate to oversee the holding of elections in 2015, with 9 August set as the date for the first round of the legislative elections, 25 October for the second round of the legislative elections and the first round of the presidential elections and 27 December for the second round of the presidential elections.

55. The elections held on 9 August 2015 were preceded by acts of violence (five murders and two attempted murders) and marred by numerous irregularities (violent incidents in at least 104 polling stations; problems with polling booths, ink and ballot boxes in several others; and the unlawful presence of candidates or party representatives on electoral premises to put pressure on voters). The average participation rate was 18 per cent across the country and lower in the capital.

56. The elections held on 25 October were characterized by fewer irregularities, as a number of corrective measures were adopted at the request of election observers. The national average participation rate was 25 per cent. The elections were nonetheless contested by several sectors and, in particular, by eight presidential candidates who did not obtain the highest number of votes, as announced by the Provisional Electoral Council. In the face of these criticisms, the Government established the National Electoral Evaluation Commission on 16 December, after which, on 21 December, the Council postponed sine die the elections scheduled to take place on 25 December.

57. The National Electoral Evaluation Commission submitted its report on 3 January 2016 and, among other recommendations, concluded that "in order to move forward with the process and ensure a meaningful turnout in a calm setting, two things were necessary: political dialogue among the various stakeholders and a thorough technical review of the election machinery's accountability with regard to irregularities that seemed to point to large-scale fraud".[14] The new date set for the second round of the presidential elections was 24 January 2016.

58. On 22 January 2016, two days before the date set for the second round of the presidential elections, the Provisional Electoral Council again suspended preparations, in the wake of acts of violence against premises, property and even individuals linked to the elections in different parts of the country, including opposite the Council's offices in Pétion-ville. As two members of the Council resigned that same day, the Council was unable to attain a quorum.

59. Since President Martelly's term was due to expire on 7 February 2016 and there was no President-elect to succeed him, President Martelly, the president of the Senate, Mr. Privert, and the president of the Chamber of Deputies, Cholzer Chancy, signed an agreement on 5 February 2016 authorizing the latter two to receive, on behalf of Parliament, the statement of the outgoing President of the Republic on "the end of his term and his departure from office on 7 February 2016"[15] and to begin the process of "bridging the gap"[16] through the election of an interim President of the Republic by the National Assembly within a period not exceeding five calendar days. The interim President would have a mandate to submit to Parliament the name of a consensus candidate to act as Prime Minister, appoint new members to the Provisional Electoral Council and continue the electoral process by "giving effect to the technical recommendations of the Independent

[14] Report of the National Electoral Evaluation Commission, 3 Jan. 2016, p. 12.

[15] Political agreement to ensure institutional continuity at the end of the term of the President of the Republic in the absence of a President-elect and the continuation of the electoral process initiated in 2015, 5 Feb. 2016, para. I (1).

[16] Ibid., para. I (4).

Electoral Evaluation Commission."[17] According to the agreement, "the term of office of the interim President shall be no more than 120 days from the date of his or her assumption of office. If necessary, the National Assembly shall take the requisite measures."[18]

60. On 14 January 2016, the National Assembly elected Mr. Privert interim President of the Republic from among 13 candidates, in accordance with the agreement signed with the outgoing President.

61. On 25 March 2016, the Senate and the Chamber of Deputies approved the interim President's appointment of Jean-Charles Enex as the new Prime Minister. The interim President also appointed new members to the Provisional Electoral Council following a consultation process involving various sectors of society.

62. After consultations "with the different sectors of the country with a view to concluding the electoral process in accordance with the agreement of 5 February 2016", the Independent Electoral Evaluation and Verification Commission was established on 28 April by presidential decree and "tasked with restoring the confidence of political actors in the electoral process by confirming the accuracy of the results of the 2015 elections."[19]

63. On 29 May 2016, the Commission concluded that "the electoral process was blighted by serious irregularities"[20] and dates were set for new elections: 9 October 2016 for the first round of the presidential elections, the second round of complementary legislative elections and the first round of elections for a third of the members of the Senate, and 8 January 2017 for the second round of the presidential elections, the second round of elections for the third of the members of the Senate and local elections.

64. After the passage of Hurricane Matthew, the Provisional Electoral Council announced new election dates: 20 November 2016 and 29 January 2017. The presidential elections of 20 November 2016 took place against a highly complex backdrop. The damage caused by Hurricane Matthew was a difficult obstacle to overcome for many voters, as the roads leading to polling stations were damaged and many people affected by the hurricane lost their civil status records or their motivation to vote, being more concerned with repairing the damage that they had suffered.

65. The elections of 20 November received a positive assessment from observers, as there were no structural irregularities and, despite the aftermath of Hurricane Matthew, voter turnout was higher than that recorded for the August 2016 elections, with the national average reaching 21 per cent, rather than 18 per cent.

66. On 29 November 2016, the Provisional Electoral Council published the preliminary results of the first round of the presidential elections: Jovenel Moïse (Parti haïtien Tèt Kale — PHTK), 595,430 votes (55.67 per cent); Jude Célestin (Ligue alternative pour le progrès et l'émancipation haïtienne — LAPEH), 208,839 votes (19.52 per cent); Jean-Charles Moïse (Pitit Dessalines), 118,142 votes (11.04 per cent); and Maryse Narcisse (Fanmi Lavalas), 96,121 votes (8.99 per cent). The disclosure of these preliminary results sparked adverse reactions from the candidates who did not win the first round, and even violent protests in the streets.

67. The final results, which were published on 3 January 2017 once the appeals lodged with the disputes mechanism of the Provisional Electoral Council had been examined and a decision taken, showed Jovenel Moïse (who is to take up the mantle of interim President on 7 February) to be the President-elect with 590,927 votes (55.60 per cent). He was followed by Jude Célestin with 207,988 votes (19.57 per cent); Jean-Charles Moïse with 117,349 votes (11.04 per cent); and Maryse Narcisse with 95,765 votes (9.01 per cent). The 23 other candidates obtained 4.10 per cent of the vote, while 0.68 per cent of the votes cast were not for any candidate.

[17] Ibid., para. V (1) (a).
[18] Ibid., para. I (7).
[19] Report of the Independent Electoral Evaluation and Verification Commission, 29 May 2016, p. 8.
[20] Ibid., p. 30.

68. During his visit in October 2016, the Independent Expert noted that the new Provisional Electoral Council enjoyed a certain prestige and that the political climate was more relaxed than the year before, despite criticism from some sectors of the Government over the extension of the term of office of the interim President of the Republic beyond the date of expiry agreed upon. The establishment of a stable government is crucial for the development and implementation of a long-term human rights policy that addresses the challenges facing Haiti in this area.

2. Other aspects of the rule of law that need to be guaranteed

69. Other areas identified by the Independent Expert as being in need of significant improvement have still not seen any change. These include the development of a reliable land registry system, the failure of judges and court officials to handle matters for which they are responsible, the scant respect for the right to life, which undermines the executive branch's ability to protect this right, and the continuing exploitation of children as domestic workers.

70. In September, an international festival organized by the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, known as the Massi Madi festival, was banned by the Port-au-Prince government commissioner on account of the homophobic attitude of evangelical pastors and the Chair of the Senate Commission on Justice, Security and National Defence, who were opposed to the event. The LGBTI community has been subjected to threats and verbal and physical attacks. Such incidents violate the right to equality and non-discrimination enshrined in the international treaties to which Haiti has become a party. The Independent Expert made a special appeal to both the authorities and the people of Haiti to respect these principles.

71. It is encouraging to learn that the Government has decided not to oppose certain recommendations made to it during its universal periodic review relating to the desire for a rule of law in Haiti that respects and protects human rights, such as the recommendations concerning children being exploited as domestic workers, measures to combat norms, practices and stereotypes that cause discrimination and violence based on sexual orientation and gender identity and the elimination of violence against women in all its manifestations, among others.[21] The Independent Expert proposes to discuss with the Haitian authorities the reasons for the Government's initial refusal to accept these recommendations.

D. Impunity and the credibility of the judicial system

72. In Haiti, access to justice is so inadequate that, although it is part of the rule of law, it needs to be dealt with separately, starting with the issue of past violations.

1. The Duvalier case and other past violations

73. It is very worrying that there has been no progress in the judicial proceedings instituted following the human rights violations perpetrated under the regime of Jean-Claude Duvalier, who died in October 2014. The proceedings must continue against his accomplices, who played a key role in the perpetration of these violations. The Independent Expert reiterates his appeal for both the Government and the judiciary to pay this case the attention that it deserves and, to that end, to take the political, financial and administrative measures necessary for a prompt, thorough and impartial investigation into past violations and for a ruling to be issued in that connection.

74. The recommendation made by the Human Rights Committee in 2014, according to which Haiti should "pursue its investigations in the Duvalier case and bring to justice all those responsible for serious violations committed during that presidency and give victims fair and equitable reparation",[22] remains valid. "The State should implement the

[21] A/HRC/34/14, para. 117.

[22] See CCPR/C/HTI/CO/1, para. 7.

recommendations of the National Commission on Truth and Justice in respect of the serious violations committed between 1991 and 1994".[13]

75. Closely following the Human Rights Committee's recommendation, the Independent Expert proposed establishing a truth, justice and redress commission to shed light on past violations and to repair the damage caused to the victims and to the country as a whole, so as to strengthen society's capacity to build a more egalitarian, justice-based society. This initiative is also inspired by the recommendations made by the National Commission on Truth and Justice in 1994.

2. The need to strengthen the capacity and credibility of the justice system as a whole

76. In 2014, the Human Rights Committee recommended that Haiti should strengthen the independence and effectiveness of the judicial system,[14] a recommendation that the Independent Expert endorsed and that he must reiterate, in order to enable the country's institutions to protect human rights effectively.

E. Humanitarian crises linked to other factors and individuals having an impact on human rights

77. In 2016, Haiti was confronted with a new situation affecting human rights in the form of Hurricane Matthew, which comes in addition to the plight of the victims of the previous natural disasters, of Haitians or persons of Haitian origin in the Dominican Republic and of the victims of cholera.

1. Victims of Hurricane Matthew and an increase in the number of displaced persons in need of emergency treatment

78. On 3 and 4 October 2016, another natural disaster struck Haiti: Hurricane Matthew. The Independent Expert wishes to reaffirm his solidarity with the victims of the hurricane and with the Haitian people as a whole.[15] He also reaffirms his willingness to facilitate the country's recovery, in his capacity as Independent Expert, and issues a special call to the Government and the international community to ensure that the protection and realization of human rights are placed at the centre of any assistance activities.

79. In order to become more closely acquainted with the situation in the areas most affected by the hurricane, the Independent Expert travelled to Jérémie in Grand'Anse Department, located in the north-west of the Tiburon Peninsula in the south of the country. He visited Nord Alexis secondary school, which was sheltering about 3,000 hurricane victims, or 525 families. He noted that they were living in terrible conditions, with no food, access to health services, drinking water, proper hygiene or sanitary services, and were homeless. They complained that they had been visited only by one Senate candidate and by the envoy of a presidential candidate but not by State representatives who could provide them with the services that they lacked, including materials to rebuild their homes.

80. These people were crammed into 20 school classrooms. The situation resembled that previously observed by the Independent Expert in the camps for persons displaced by the 2010 earthquake, that of persons who had emigrated from the Dominican Republic in the border area and that of persons deprived of their liberty in the country's prisons. Except for the quality of the building housing them, their living conditions were no different. They were hungry. Two babies had been born on site with no medical assistance during childbirth. There were another 20 or so pregnant women, several of whom were minors. Moreover, all these people were traumatized because their lives had been turned upside down overnight. A 60-year-old mother had left the school a few days earlier obviously suffering from mental illness, which, according to her neighbours, had been brought on by the loss of her home. One young woman told the Independent Expert: "We are all mentally

[13] Ibid.

[14] Ibid., paras. 16 and 17.

[15] See www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20760&LangID=F.

ill". The conditions in which these people were living were inhumane and showed no sign of improving.

61. The principal of Nord Alexis school had received instructions from the authorities to ensure that the school was ready to reopen within two weeks. He did not see how he could carry out this instruction if the authorities did not take responsibility for ensuring that the houses of those persons sheltering in the high school were rebuilt. This raised the question of whether the principal himself was resilient enough to avoid succumbing to mental illness in the face of this tragedy.

62. There were 15 other shelters like this one in schools located in Jérémie. There was no evidence to suggest that their situation was any better. Other communes had been seriously affected in Grand'Anse Department, as well as in the Departments of Nippes, Sud and Ouest and, to a lesser extent, in Nord-Ouest and Sud-Est Departments. Most houses made of wood had been damaged if not completely destroyed; more than 66,000 houses had been affected in Grand'Anse Department alone. Many sheet-metal roofs had been torn off by the winds. In addition, 103 schools had been damaged and 105 State schools had been destroyed in Grand'Anse Department. Over 70 per cent of crops had been destroyed in some areas; "thousands of heads of cattle had been swept away by floods; an enormous number of trees had been blown down; and several roads had been destroyed, as well as fishing and agricultural equipment".[36]

63. On the basis of a report published by the Office for the Coordination of Humanitarian Affairs (OCHA) on 17 October 2016, the National Human Rights Defence Network (RNDDH) stated that, across the country, "546 deaths and 128 missing persons have been recorded. Of the 2,100,000 people affected by the hurricane, 1,400,000 are in a vulnerable situation and in need of humanitarian assistance and as many as 175,509 have been displaced".[37] These figures were provisional and there was every indication that they would rise significantly.

64. Several cases of cholera were recorded after the hurricane. In Grand'Anse Department alone, the Civil Defence Department reported 691 new cases as of 20 October and warned that the number of cases was increasing rapidly.

65. While recognizing the importance of the action taken by the national authorities and the international community to cope with this disaster, the Independent Expert believes that efforts should again be stepped up and that community work should be further developed so that any activities conducted in that connection become a source of employment and economic mobilization for the population and a catalyst for strengthening social ties and improving opportunities for the development of Haitian society as a whole.

66. The violation of human rights in Haiti in the wake of natural disasters is one of the five aspects identified as a priority by the Independent Expert in his previous reports. Haiti is particularly vulnerable to this risk, more so than many other countries, and the authorities must take appropriate measures both to prevent such crises and to repair the damage resulting from them quickly.

67. The Independent Expert wishes to recall that there are some 55,000 people still living in displaced persons camps six and a half years after the 2010 earthquake and that their situation needs to be resolved. These people continue to be forcibly evicted by the property owners, which means that their rights, already seriously violated, remain under constant threat. It was encouraging to learn that, in the end, the Government decided not to oppose the recommendations made during its universal periodic review to end all forced evictions from displaced persons camps and the other recommendations concerning displaced persons.[38] The Independent Expert invites the Haitian authorities to discuss with him the reasons for their initial refusal to accept these recommendations. The Human

[36] Grand'Anse Department Emergency Operations Centre, Hurricane Matthew. Situation report, memo, laconic, 20 Oct. 2016.

[37] "Passage of Hurricane Matthew through Haiti: RNDDH demands respect for human dignity from the Government of Haiti, political parties and humanitarian agencies", 21 Oct. 2016, p. 4.

[38] A/HRC/34/14, para. 117.

Rights Committee also recommended that Haiti should "ensure that no persons are evicted from the camps unless another solution has been found for them and their families and that all persons displaced by the earthquake are able to benefit from lasting solutions".[29]

2. Statelessness and the rights of Haitians and persons of Haitian origin migrating from the Dominican Republic

88. In his previous reports, the Independent Expert has commented on the need to protect Haitians and persons of Haitian origin living in the Dominican Republic whose rights, including the right to a nationality, are not respected or even recognized. These people are at risk of being deported and ending up stateless in Haiti. The Government stated that "these persons benefit from the principle of *jus sanguinis*" and that "the Government has always provided a birth certificate to Haitians who did not have one."[30] However, there is still a need to take special legal measures to recognize the rights of these persons in Haiti more effectively, since they encounter practical difficulties in proving their right to Haitian nationality.

89. In March 2016, the Independent Expert visited Ouenaminthe, on the northern border, where a considerable number of Haitian nationals have been deported since August 2015. In February 2016, there were approximately 2,500 deportees (including some 300 adult women and over 150 minors). They were, for the most part, agricultural workers taken in by Haitian public, civil and religious organizations, which did an admirable job in very difficult circumstances. The Independent Expert learned that the deportation of unaccompanied minors was continuing. He reiterates his call for the Haitian authorities to take measures to prevent this from occurring and to improve the State's capacity to guarantee the rights of individuals who have ties, albeit difficult to prove, to Haitian society.

90. The Independent Expert was informed by the Haitian authorities that relations with the Dominican Republic had improved during the course of 2016 and he encourages them to seize the opportunity to improve the legal status of persons of Haitian origin living in the neighbouring country so as to afford their rights stronger protection.

91. It is reassuring to know that, in the end, the Government of Haiti did not oppose the recommendation made to it during its universal periodic review to update the memorandum of understanding with the Dominican Republic on repatriation mechanisms in accordance with international standards or the recommendation to issue documents to persons of Haitian origin living in the Dominican Republic in order to regularize their status and thus avoid deportations, in coordination with the International Organization for Migration.[31] The Independent Expert invites the Haitian authorities to discuss with him the reasons for the Government's initial refusal to accept these recommendations during the review.

3. Victims of cholera

92. Another situation that needs to be resolved urgently is that of the victims of cholera. According to the most conservative figures, 9,415 people have died of cholera and more than 792,153 have been infected since October 2010.[32] The situation worsened towards the end of 2016 owing to the passage of Hurricane Matthew, which led to an increase in the number of victims and allowed the epidemic to spread by making it more difficult to control.

93. The Independent Expert, like his predecessor, has invited the United Nations to act commensurately with the seriousness of the problem and its responsibilities. To this end, the Independent Expert has proposed establishing a truth, justice and redress commission

[29] See CCPR/C/HTI/CO/1, para. 18.

[30] "Response of the Government of Haiti to the report of the Independent Expert on the situation of human rights in Haiti", para. 4.

[31] A/HRC/34/14, paras. 116 and 117.

[32] Ministry of Public Health and Population, case report, 1 Sep. 2016, see http://mspp.gouv.ht/site/downloads/Rapport%20Web%2001.09.2016_Avec_Courbes_Departementales(1).pdf.

and applying the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly on 16 December 2005.

94. On 23 October 2015, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on extreme poverty and human rights, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the human rights to safe drinking water and sanitation and the Independent Expert on the situation of human rights in Haiti sent a letter to the Secretary-General expressing concern about this problem and suggesting that a more comprehensive solution should be found. On 25 February 2016, the Under-Secretary-General replied to this letter, providing information on the activities undertaken by the United Nations to resolve this problem and thanking the signatories of the letter for their willingness to devote more efforts, within their respective mandates, to examining possible additional measures that the United Nations could take to assist the victims of cholera and their communities.

95. On 25 October 2016, the Special Rapporteur on extreme poverty and human rights submitted to the Third Committee of the General Assembly a report in which he stated that the legal position of the United Nations to date had involved denial of legal responsibility for the outbreak, rejection of all claims for compensation, a refusal to establish the procedure required to resolve such private law matters, and entirely unjustified suggestions that the Organization's absolute immunity from suit would be jeopardized by adopting a different approach.[33] Describing the existing approach as morally unconscionable, legally indefensible and politically self-defeating,[34] he invited the United Nations to apologize and to admit its responsibility.

96. On 1 December 2016, the Secretary-General announced a new approach to dealing with cholera in Haiti: "On behalf of the United Nations, I want to say very clearly: we apologize to the Haitian people. We simply did not do enough with regard to the cholera outbreak and its spread in Haiti. We are profoundly sorry for our role."[35] He added, "For the sake of the Haitian people, but also for the sake of the United Nations itself, we have a moral responsibility to act. And we have a collective responsibility to deliver".[36] Against this backdrop, the Secretary-General then announced a new two-track strategy. Track 1 involves intensifying the Organization's support in order to reduce and ultimately end the transmission of cholera, improve access to care and treatment and address the longer-term issues of water, sanitation and health systems in Haiti. Track 2 involves developing a package that will provide material assistance and support to those Haitians most directly affected by cholera. These efforts must include, as a central focus, the victims of the disease and their families.[37]

97. This new approach represents a dramatic shift in the position of the United Nations on its responsibility for the cholera epidemic in Haiti. The Independent Expert hopes that this development will continue so that the victims of cholera in the country receive redress and the epidemic is completely eradicated from the territory. The Independent Expert urges Member States to provide financial resources in support of this strategy, including track 2, with its people-centred focus.

98. The Independent Expert also encourages Haiti to work in partnership with the United Nations to implement this new approach and to take all the measures necessary to put in place sanitation structures so as to resolve definitively and for the long term the serious structural problems associated with providing the entire population with access to drinking water.

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[33] A/71/367, summary.

[34] Ibid.

[35] See http://un.org/apps/news/story.asp?NewsID=55694#.WIob2032bcs.

[36] Ibid.

[37] A/71/620, summary.

III. Conclusions and recommendations

99. The Independent Expert has noted that significant efforts have been undertaken to give effect to two of the recommendations made in his previous reports, concerning elections and the responsibility of the United Nations for the cholera epidemic. These efforts should continue until fully satisfactory results are achieved in these two areas.

100. The degree of priority accorded to the other issues raised by the Independent Expert remains unchanged, and he would like to reiterate the call to the authorities to adopt urgent measures to ensure:

(a) That illiteracy is eradicated within a reasonably short time;

(b) That the practice of prolonged pretrial detention is eliminated; he hopes that the Presidential Commission appointed to deal with the matter will achieve this goal as soon as possible;

(c) That a truth, justice and redress commission is established in respect of the large-scale, systematic human rights violations committed in the past;

(d) That decent housing is made available for persons displaced by the 2010 earthquake and Hurricane Matthew who are still living in camps;

(e) That the rights of Haitians and persons of Haitian origin living abroad or having previously been at risk of statelessness abroad, particularly in the Dominican Republic, are realized. It is also important that the Haitian authorities provide persons arriving from the Dominican Republic with adequate shelter and conditions that are in conformity with human rights, that they establish long-term integration programmes and that they raise public awareness of the importance of registering all births, whether in Haiti, the Dominican Republic or elsewhere. It is also important that the Haitian authorities provide Haitians living in the Dominican Republic who need to regularize their situation in that country with the necessary civil status documents.

101. The Independent Expert trusts that the difficulties associated with governance and transition in Haiti will be overcome through cooperation in seeking solutions. This should lead to the adoption of a human rights policy in which these five recommendations should be paid due attention by the authorities and enjoy the support of the Council. The rights of Haitian women should be treated as a priority in this policy, in view of their vulnerability, and also those of children, persons with disabilities and older persons. The interim President and his ministers informed the Independent Expert of their agreement with the recommendations and their willingness to act upon them to the extent possible, within the limited duration of their term in office. This willingness should be followed through by the recently elected authorities.

102. The Independent Expert recommends that the new Government should adopt a human rights plan, in cooperation with civil society and the Office of the Ombudsman, with a view to devising structural measures that will:

(a) Lead to a substantial reduction in social inequality and ensure the enjoyment of a basic level of social, economic and cultural rights by the entire population;

(b) Make prison conditions more humane, in particular by reducing prison overcrowding, providing appropriate health and sanitation facilities, ensuring that food is available for prisoners and making it possible for inmates to work or study while in prison;

(c) Strengthen the rule of law;

(d) Improve the effectiveness and credibility of the judicial system.

103. **Special attention should be accorded to women's rights in all these areas, with a view to reducing the extreme gender inequality in Haiti.**

104. **The appointment of a high-level focal point for human rights, such as existed until December 2014, would be very useful for ensuring the consistency and effectiveness of the Government's action in this area and the necessary participation of civil society in the development and implementation of a policy to respect, protect and promote human rights in Haiti.**

105. **The Independent Expert continues to consider that the human rights situation in Haiti, although extremely serious, can be remedied if all efforts to improve it pull in the same direction. He once again issues a special call to the authorities, civil society and the international community to build a strong consensus on this matter, for which the starting point could be these recommendations, or perhaps other, more relevant, ones, but in any event a consensus that could generate a strong political will and steadfast efforts to achieve a set of core results.**

106. **The Independent Expert reaffirms his strong commitment to assist in this undertaking.**

107. **Bearing in mind the MINUSTAH consolidation plan and the ongoing discussions regarding the presence of the United Nations in Haiti, the Independent Expert reiterates the importance of ensuring that the Office of the United Nations High Commissioner for Human Rights maintains a presence in Haiti in order to support efforts to overcome the obstacles to the full enjoyment of human rights in the country.**